Basco Enterprises (Pte) Ltd v Soh Siong Wai

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 1023 OF 1988
WEE CHONG JIN CJ
9 FEBRUARY 1989

Land Law – Compulsory acquisition – Acquisition gazetted and possession of premises taken by Collector – Magistrate's Court summons against applicant for unlawfully occupying state land – Application to transfer proceedings to High Court – Whether applicant has raised bona fide claim to title – Whether premises had vested absolutely in the state – State Lands Encroachments Act (Cap 315, 1985 Ed), s 3(3) – Land Acquisition Act (Cap 152, 1985 Ed), s 16

Land Law – Compulsory acquisition – Declaration that lands are needed for urban redevelopment – Whether preservation and conservation of premises constitute urban redevelopment

The applicant was the owner of a piece of land on which stood a building. On 23 February 1984, by a government gazette, the government of Singapore published a declaration made under the Land Acquisition Act (Cap 152, 1985 Ed) that the piece of land was needed 'for a public purpose, viz urban redevelopment'. The applicant made his claim for compensation to the Collector and the Collector awarded a sum of $4,974,060. The Collector then took possession of the premises under s 16 of the Land Acquisition Act. Subsequently, a summons was issued by the Magistrate's Court under s 2 of the State Lands Encroachments Act (Cap 315, 1985 Ed) upon information by the respondent (the Deputy Collector of Land Revenue of the Urban Redevelopment Board) that the applicant had been in 'unlawful occupation' of state land. By this originating summons, the applicant sought an order under s 3 of the State Lands Encroachments Act that the proceedings be transferred from the Magistrate's Court to the High Court.

The only question for the court's decision was whether the applicant had raised a 'bona fide claim to the title' within the meaning of s 3(3).

In the affidavit filed in support of the application, the applicant contended that: (a) the Urban Redevelopment Board and the Ministry of National Development acted ultra vires the Land Acquisition Act and for an improper purpose; and (b) although the declared purpose was urban redevelopment, the real intention of the authorities was the preservation and conservation of the premises.

Held, dismissing the application:

(1) It is manifestly clear that the title to the premises had vested absolutely in the state. After possession had been taken of the premises, the government was no longer at liberty to withdraw from the acquisition except in the case provided for in s 43 of the Land Acquisition Act. The result was that the applicant could no longer at this stage raise any 'bona fide claim to title'. His claim lay in compensation.

(2) Even proceeding on the assumption that the public law arguments could legitimately be canvassed, there was no substance whatever in the applicant's contentions. The short answer to the first contention was that the premises were acquired by the government as was evident from Declaration No 593, which was signed by the Secretary to the Cabinet. As to the second contention, the court entertained no doubts that conservation or preservation of historical and heritage buildings which had become dilapidated, whether carried out by themselves or together with other developments in designated urban areas, clearly encompassed 'urban redevelopment'.

[*Editorial Note*: The applicant has appealed to the Court of Appeal vide Civil Appeal No 115 of 1988.]

Case referred to

1 *Re Robinson's* [1980] 1 MLJ 255 (refd)

Legislation referred to

Land Acquisition Act (Cap 152, 1985 Ed) ss 5, 8, 10, 16, 43
State Lands Encroachments Act (Cap 315, 1985 Ed) ss 3, 20

M Karthigesu for the Land Collector.
Alexander Charles Louis for the applicant.

Cur Adv Vult

Wee Chong Jin CJ: By this originating summons, the applicant, Basco Enterprises (Pte) Ltd ('the applicant'), sought an order under s 3 of the State Lands Encroachments Act ('the Act') (Cap 315, 1985 Ed) that 'the proceedings in Summons No URA(L)/22/88 be transferred from the Magistrate's Court to the High Court'. The summons was issued by the Magistrate's Court under s 2 of the Act upon information by the respondent, the Deputy Collector of Land Revenue ('the Collector') of the Urban Redevelopment Board, that the applicant had been in 'unlawful occupation' of state land.

Section 3 of the Act, in so far as relevant, provides as follows:

> (2) In any action commenced under s 2 for the removal of any person in unlawful occupation of State land, the defendant may within such time as may be prescribed by the Rules of the Supreme Court for the time being in force, apply to the High Court for the action to be transferred to the High Court on the ground that the defendant is claiming title to the land.
>
> (3) On the hearing of any such application, the High Court, if it is satisfied that a bona fide claim of title is raised, may make an order for the action to be transferred to the High Court.

'State land' is defined in s 20 to include:

> all land contained or referred to in a notification or declaration made under the provisions of s 3 or 5 of the Land Acquisition Act, and published in the gazette in accordance with those provisions.

The only question for my decision was whether the applicant had raised a 'bona fide claim to the title' within the meaning of s 3(3). For reasons which I shall now give, I was not satisfied that any bona fide claim to title was raised and accordingly dismissed the application.

The applicant was, at the material time, the owner of the land Lot No 8 TS 10, on which stood a building known as No 39, Stamford Road, Singapore ('the premises'). On 23 February 1984, the government of Singapore, by notification in the Government Gazette Extraordinary No 11 of Declaration No 593, published a declaration made under s 5 of the Land Acquisition Act (Cap 152, 1985 Ed) that the 'pieces of land ... more particularly described in the Schedule hereto are needed for a public purpose, viz urban redevelopment'. The

Schedule referred, inter alia, to Lot No 8 TS 10, the applicant's premises.

A notice under s 8 of the Land Acquisition Act, stating, inter alia, that the applicant might make his claim for compensation to the Collector and calling upon the applicant to attend an inquiry for the purposes specified in s 10, was duly issued by the Collector and served upon the applicant. The inquiry under s 10 was held on 2 April 1984 and it was attended by the applicant's solicitor.

On 14 May 1984, the applicant's solicitors wrote to the Collector making a claim for compensation for $15,000,000. The letter stated, inter alia, the following factors which the applicant had considered when arriving at the sum claimed for compensation:

> i The present owners had submitted plans to redevelop the said property according to the zoning requirements, they were fully prepared to redevelop the site taking into consideration any road widening proposal, or MRT or any other public scheme that may affect the site and its boundaries.
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> j The owners were also prepared to preserve the facade of the building at their own expense or alternatively to preserve the facade and redevelop the interior structure of Stamford House to abide by the plans of the Urban Redevelopment Authority and any other authority.

The significance of the contents of this letter was that this appeared to be the first time the applicant had ever made any mention of being prepared to preserve the facade of the premises, or to redevelop the interior in accordance with the plans of the authorities. It was evident from the applicant's 'outline planning application' dated 2 February 1983 that the applicant had, even as late as February 1983, intended to erect on the site of the premises 'fifteen-storey shops (and) offices with carparks and one-storey basement', which planning application, if approved, would, inevitably, have involved the demolition of the existing building on the premises.

On 27 September 1985, the Collector made an award of $4,974,060 (part vacant possession). Notice of appeal against the Collector's award was lodged with the Appeals Board on behalf of the applicant on 3 October 1985. On 2 December 1987, the amount of compensation awarded by the Collector was paid into court under s 40. (See order of court dated 11 November 1987 in Originating Summons 1206 of 1987.)

Since the events which followed are of crucial importance to the outcome of this application, it is necessary, at this stage, to set out the relevant statutory provisions of the Land Acquisition Act.

Section 16 provides:

> 16(1) When the Collector has made an award under s 10, he may take possession of the land by posting thereupon an appropriate notice.
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> (2) Upon taking possession of the land under sub-s (1), the Collector shall also serve a copy of the notice upon the persons interested in the land.

Section 18, in so far as material, provides:

> 18 Immediately on taking possession of any land under s 16 or 17, the Collector shall –
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> (a) in the case of land registered under the provisions of the Registration of Deeds Act, give notice to the Registrar of Deeds who shall make an entry in the books of the registry that the land has vested in the State, and *upon that entry being made, the land shall vest in the State free from encumbrances* or ... (emphasis added)

On 15 December 1987, the Collector took possession of the premises under s 16 by posting thereupon an appropriate notice and serving a copy thereof upon the applicant. On 30 December 1987, upon the requisite notice being given by the Collector to the Registrar of Deeds, an entry was endorsed in the books of the registry to the effect that the premises had vested in the state. Upon that entry, the premises were vested in the state free from encumbrances.

It is, in my opinion, manifestly clear from this sequence of events that the title to the premises had vested absolutely in the state. After possession had been taken of the premises, the government was no longer at liberty to withdraw from the acquisition except in the case provided for in s 43 of the Land Acquisition Act (see s 48). In this connection, I find the words of Lord Wilberforce, when delivering the judgment of the Privy Council in *Re Robinson's*,[1] at p 257, particularly apt:

> Once the machinery for acquisition has started to operate, which it has under s 5, then, subject to the power to withdraw, the owner of the land, who, it is important to observe, has no right to object to the acquisition, has an interest only in compensation.

In my opinion, the result was that the applicant could no longer at this stage raise any 'bona fide claim to title'; his claim lay in compensation.

Despite what appeared to me to be the clear interpretation of these statutory provisions, the applicant, in the affidavit filed in support of the application, endeavoured to advance a number of 'public law' arguments in support of their contention that as the acquisition was 'ultra vires' and 'void', they were 'never lawfully deprived of his title to the premises'. In my view, these contentions proceeded upon the wrong premises and overlooked the important legal effects of the statutory provisions referred to earlier.

But even proceeding on the assumption that these arguments could legitimately be canvassed at this stage, I was of the view that there was no substance whatever in these contentions.

The applicant alleged that the Urban Redevelopment Board ('URA') and the Ministry of National Development ('MND') acted 'ultra vires' the Land Acquisi-

tion Act and for an 'improper purpose' in that 'they acquired the premises at the 1973 market value and then to resell it by open public tender (including tender by the applicant) at the current market value, thereby ensuring the accrual of a considerable profit to the URA'. The short answer to this contention (as was pointed out by the Collector in his affidavit) was that the premises were not acquired by the URA or the MND; the premises were acquired by the government as was evident from Declaration No 593, referred to earlier, which was signed by the Secretary to the Cabinet.

It was further alleged by the applicant that the acquisition was done for 'improper purposes' and 'in bad faith'. The basis of this suggestion was that although the declared public purpose was 'urban redevelopment', the real intention of the authorities was the preservation and conservation of the premises. In response, an affidavit by the senior principal officer, Planning and Development Division of the URA, was filed on behalf of the Collector. The affidavit stated that 'the public purpose, viz urban redevelopment' stated in the declaration envisaged a 'comprehensive development' of what was known as the Central Area (which included the applicant's premises and its immediate surrounds), the 'preservation and conservation' of the premises and the adjacent buildings and the integration of these buildings with development on the other adjoining pieces of land previously acquired by the government for the same public purpose, viz urban redevelopment. In this connection, I accept the view expressed by the Collector in his affidavit that 'urban redevelopment must be looked at as a whole and in the context of the area being developed which may consist in part of rebuilding and in part of conserving buildings in the area being developed'. Furthermore, I entertained no doubts that conservation or preservation of historical and heritage buildings which had become dilapidated, whether carried out by themselves or together with other developments in designated urban areas, clearly encompassed 'urban redevelopment'. As stated in the Collector's affidavit, 'the fact that Stamford House (the applicant's premises) is to be renovated and conserved instead of being knocked down and another building erected in its place does not mean that Stamford House has not been redeveloped'.

For these reasons, I was of the view that the application was plainly without merit and I dismissed the application with costs.

Application dismissed.

Solicitors: *Tan, Rajah & Cheah; Madhavan Louis & Partners.*

Reported by *Ng Sheau Jiuan*

Public Prosecutor v Seow Khoon Kwee

HIGH COURT (SINGAPORE) – CRIMINAL CASE NO 46 OF 1986
THEAN J AND CHAO HICK TIN JC
14 OCTOBER 1988

Criminal Law – Murder – Murder of fellow prisoner with broken glass – Requisite intention for murder not proved by prosecution – General defences of provocation, private defence and sudden fight – Applicability of – Conviction of culpable homicide not amounting to murder – Penal Code (Cap 224, 1985 Ed), s 300 & Exceptions 1, 2, 4 to s 300

Criminal Procedure – Close of prosecution's case in murder trial – Court need not decide whether prosecution has proved beyond reasonable doubt that accused is guilty of charge – Sufficient if prosecution has made out case which if unrebutted would warrant conviction of offence

The accused was charged with the murder of a fellow prisoner under s 300 of the Penal Code (Cap 224, 1985 Ed) whilst in detention. It was proven that the accused had fatally stabbed the deceased with a piece of broken glass. At the close of the prosecution's case, the defence submitted that the prosecution (a) had not led any evidence that the fatal wound inflicted on the deceased was 'beyond reasonable doubt' delivered by the accused and (b) had failed to prove that the accused had the requisite intention required under s 302 of the Penal Code. The defence also relied on the general exceptions to murder relating to provocation, sudden fight and private defence.

Held, convicting the accused of the offence of culpable homicide not amounting to murder:

(1) The prosecution has adduced evidence of primary facts which are not inherently incredible and which, if accepted, would establish the essential elements of the alleged offence. Following *Haw Tua Tau* v *PP*,[1] the court acted on the presumptions that (a) all such evidence of primary facts was true and (b) there would be nothing to displace the inferences as to further facts or to the state of mind of the accused which would reasonably be drawn from the primary facts in the absence of further explanation.

(2) At the close of the case for the prosecution, the court need not decide whether the prosecution has proved beyond reasonable doubt that the accused is guilty of the charge. It is sufficient if the prosecution had made out a case which, if unrebutted, would warrant a conviction of the offence with which the accused is charged.

(3) Under s 102 of the Penal Code, the right of private defence commences as soon as reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence. At the time when the accused first encountered the deceased and they were staring at each other, if the accused was under an apprehension that the deceased might beat him he could have recourse to the protection of the prison officers instead of proceeding to collect the piece of glass he had hidden. The accused was thus not entitled to exercise the right of private defence.

(4) Exception 1 of s 300 of the Penal Code has no application as this is not a case where the accused caused the death of the deceased whilst deprived of the power of self-control by any grave and sudden provocation on the part of the deceased. This is a case of a death being caused in the course of a fight.